

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KODY CREE PATTEN,

Plaintiff

v.

WILLIAM RUEBART,

Defendant

Case No. 3:22-cv-00226-ART-CSD

ORDER**I. DISCUSSION**

On May 23, 2022, Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), submitted a document entitled “notice of appeal” with a case number of CV-HC-13-116. (ECF No. 1-1). The Court believes that Plaintiff may have mistakenly filed his notice of appeal in the U.S. District Court for the District of Nevada. Plaintiff does not have any other pending cases in this Court in which to file a notice of appeal. To the extent that Plaintiff may be trying to appeal a state court order, he would need to pursue his appeal through the higher state courts. *See Noel v. Hall*, 341 F.3d 1148, 1155 (9th Cir. 2003) (holding that “[a] party disappointed by a decision of a state court may seek reversal of that decision by appealing to a higher state court. A party disappointed by a decision of the highest state court in which a decision may be had may seek reversal of that decision by appealing to the United States Supreme Court. In neither case may the disappointed party appeal to a federal district court, even if a federal question is present or if there is diversity of citizenship between the parties”).

If Plaintiff believes that he may have filed his notice of appeal with this Court in error, he may submit a motion to voluntarily dismiss this action. If Plaintiff is attempting to initiate a civil rights lawsuit or petition for writ of habeas corpus, he should submit the appropriate forms and either pay the appropriate filing fee or submit an application to proceed *in forma pauperis*. The Clerk of the Court will send Plaintiff courtesy copies of these forms to help Plaintiff decide what type of lawsuit, if any, Plaintiff is attempting to

1 raise in federal court.

2 **II. CONCLUSION**

3 For the foregoing reasons, IT IS ORDERED that, on or before **July 22, 2022**,
4 Plaintiff will: (1) file a notice to voluntarily dismiss this action if initiated in error; (2) submit
5 a complaint to this Court if initiating a civil rights action; or (3) submit a petition for writ of
6 habeas corpus to this Court.

7 IT IS FURTHER ORDERED that, if Plaintiff is seeking to initiate a civil rights lawsuit
8 or a petition for writ of habeas corpus, he will: (1) file a fully complete application to
9 proceed *in forma pauperis*; (2) pay the full \$402 filing fee for a civil rights action; or (3)
10 pay the full \$5 filing fee for a habeas corpus action on or before **July 22, 2022**.

11 IT IS FURTHER ORDERED that the Clerk of the Court will send to Plaintiff the
12 approved forms and instructions for filing a 42 U.S.C. § 1983 complaint and petition for
13 writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Clerk of the Court will also send
14 Plaintiff a copy of his "notice of appeal." (ECF No. 1-1).

15 IT IS FURTHER ORDERED that the Clerk of the Court will send Plaintiff the
16 approved form application to proceed *in forma pauperis* by an inmate, as well as the
17 document entitled information and instructions for filing an *in forma pauperis* application.

18 IT IS FURTHER ORDERED that, if Plaintiff does not timely comply with this order,
19 this case will be subject to dismissal without prejudice for Plaintiff to refile the case with
20 the Court, under a new case number, when Plaintiff is able to submit a complaint or a
21 petition for writ of habeas corpus and file a complete application to proceed *in forma*
22 *pauperis* or pay the full filing fee for the lawsuit.

23 DATED: May 27, 2022

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25 UNITED STATES MAGISTRATE JUDGE
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